

FILED

DEC 29 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNDER SEAL,)

No. C 07-6445 MMC

12 Plaintiff,)

13 v.)

**UNITED STATES' NOTICE OF ELECTION
TO DECLINE INTERVENTION; AND
[REDACTED] ORDER**

14 UNDER SEAL,)

15 Defendant.)
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA ex rel.,)
VICTOR C. MONEGAS, JR.,)
Plaintiff,)
v.)
UNITED AIR LINES, INC.,)
Defendant.)

No. C 07-6445-MMC

**UNITED STATES' NOTICE OF ELECTION
TO DECLINE INTERVENTION; AND
[PROPOSED] ORDER**

FILED UNDER SEAL

The United States of America, pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the action. *See United States ex rel. Green v. Northrop*, 59 F.3d 953, 959 (9th Cir. 1995); *United States ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994).

Therefore, the United States requests that, should either the relator or the defendant propose

1 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United
2 States with notice and an opportunity to be heard before ruling or granting its approval.

3 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
4 filed in this action be served upon the United States. The United States also requests that orders
5 issued by the Court be sent to the Government's counsel. The United States reserves its rights to
6 order any deposition transcripts and to intervene in this action, for good cause, at a later date.

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8 Date: December 23, 2009

Respectfully submitted,

9 JOSEPH P. RUSSONIELLO
10 United States Attorney

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12 EDWARD A. OLSEN
13 Assistant United States Attorney

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[REDACTED] ORDER

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

1. All sealed contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendant, except for the Complaint and First Amended Complaint, this Order, and the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.

2. The relator shall serve his First Amended Complaint upon the defendant, together with this Order and the accompanying Notice of Election to Decline Intervention.


3. The seal is lifted as to all matters occurring in this action after the date of this Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

5. All orders of this Court shall be sent to the United States.

6. Should the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

Date: 12/29/09


MAXINE M. CHESNEY
United States District Judge